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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,205	10/31/2003	Frank Forrest Humbles		9994

7590 12/08/2005
Michael E. Mauney
Attorney at Law
P. O. Box 10266
Southport, NC 28461

EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,205	Applicant(s) HUMBLES, FRANK FORREST	
	Examiner Tara L. Mayo	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 through 6 and 10 through 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "easily" in claim 2 is a relative term which renders the claim indefinite. The term "easily" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 3 is similarly rejected for the recitation of "easily and quickly." Claim 10 is similarly rejected for the recitation of "quickly."

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1 through 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogburn (U.S. Patent No. 2,245,293) in view of Witter (U.S. Patent No. 3,884,225) and Tari (U.S. Patent No. 4,662,366).

Ogburn '293, as seen in Figures 1, 2 and 5, shows an arm protection apparatus (2) for positioning a patient's arms (11) when in a prone or supine position on a patient support comprising:

with regard to claim 1,

(a) at least one member with a central portion (11) positionable under the patient's body;

(b) on said at least one member, a soft cushion pad right arm section (19) positionable around the right arm of a patient including means for attaching (33, 34 and 35, collectively) said soft cushion pad right arm section to said central portion of said at least one member so that said soft cushion pad right arm section is folded around a patient's right arm; and

(c) on said at least one member, a soft cushion pad left arm section (19) positionable around the left arm of a patient including means for attaching (33, 34 and 35, collectively) said soft cushion pad left arm section to said central portion of said at least one member so that said soft cushion pad left arm section is folded around a patient's left arm;

with regard to claim 2,

wherein said member is made of material that is easily cut whereby a portion of the member may be cut away when necessary for visualizing a portion of a patient's body that may be otherwise covered by said at least one member; and

with regard to claim 3,

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wherein said right and left means for attaching readily attach and detach whereby said right and left arm sections may be easily and quickly attached and detached from said central portion of said at least one member.

Ogburn '293 fails to teach:

the at least one member being a soft cushion pad;

the right and left arm sections comprising upper and lower sections foldable around upper and lower parts of a patient's right and left arms;

the at least one soft cushion pad being radiolucent;

the at least one soft cushion pad comprising first and second rectangular sections connected together, thereby forming a generally H-shaped pad with the right arm upper section, left arm upper section, right arm lower section, and left arm lower section comprising legs of the H; and

wherein the H-shaped pad has a width approximately equal to the length of a patient's torso.

Witter '225, as seen in Figure 1, shows a patient turn and hold device comprising a soft radiolucent cushion pad (20) positionable under the patient's body (col. 1, lines 59 through 63; and col. 2, lines 34 through 36).

Tari '366, as seen in Figures 1 through 4, shows an arm support (10) for a patient's arms comprising separate upper and lower assemblies (30 and 32) positionable about the upper and

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lower sections (18 and 22) of an arm of a patient (14), the upper and lower assemblies configured to immobilize the entire arm of a patient (col. 3, lines 62 through 67), wherein each of the upper and lower sections includes means for attaching (45 and 46).

With regard to claim 1, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the central member of the device shown by Ogburn '293 such that it would include a soft cushion pad as taught to be desirable by Witter '225. The motivation would have been to enhance the comfort of a patient lying on the apparatus.

With regard to claim 1, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by Ogburn '293 such that the right and left arm sections would each include upper and lower sections as taught by Tari '366. The motivation would have been to provide support for the upper and lower sections of a patient's right and left arms, respectively.

With regard to claim 4, while Ogburn '293 broadly addresses the type of materials suitable for the arm section cushion pads (col. 2, line 4), it would have been obvious to one having ordinary skill in the art at the time the invention was made to make them radiolucent. The motivation would have been to permit radiological operations to be performed on a patient while positioned in the arm protection apparatus.

With regard to claims 5 and 6, a generally H-shaped pad having a width approximately equal to the length of a patient's torso is inherent to the device shown by Ogburn '293 as modified above by Witter '225 and Tari '366.

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5. Claims 7 through 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogburn (U.S. Patent No. 2,245,293) in view of Witter (U.S. Patent No. 3,884,225).

Ogburn '293, as seen in Figures 1, 2 and 5, shows an arm protection apparatus for positioning around a patient's arms when in a prone or supine position on a patient support comprising:

with regard to claim 7,

(a) at least one central member (11), said central member sized to be positioned under the torso of a patient;

(b) attached on said central member, at least one arm section cushion pad (19) with an arm end extending away from said central member, said at least one arm section cushion pad sized to loop around at least a portion of an arm of a patient; and

(c) means for attaching (33, 34 and 35, collectively) said arm end of said at least one arm section cushion pad to said central member, whereby at least a portion of an arm of a patient may be contained within said at least one arm section cushion pad looped around an arm of a patient and held into place in proximity to a patient's torso;

with regard to claim 8,

wherein said central member is sized whereby there is a plurality of arm sections;

with regard to claim 10,

wherein said means for attaching readily attach and detach whereby said plurality of arm sections may be quickly used to secure a patient's arm or to unsecure a patient's arm in proximity to a patient's torso;

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with regard to claim 11,

wherein said plurality of arm sections are constructed of material that is easily cut whereby a portion of said plurality of arm sections may be cut away when necessary for visualizing a patient's arm folded within said arm section; and

with regard to claim 12,

wherein there are two arm sections and each arm section is sized to fit around approximately one-half of a patient's arm.

Ogburn '293 fails to teach:

the central member being a cushion pad; and

the plurality of arm section cushion pads being radiolucent.

Witter '225, as seen in Figure 1, shows a patient turn and hold device comprising a soft cushion pad (20) sized to be positioned under the torso of a patient (col. 2, lines 34 through 36).

With regard to claim 7, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the central member of the device shown by Ogburn '293 such that it would include a cushion pad as taught to be desirable by Witter '225. The motivation would have been to enhance the comfort of a patient.

With regard to claim 9, while Ogburn broadly addresses the type of materials suitable for the arm section cushion pads (col. 2, line 4), it would have been obvious to one having ordinary skill in the art at the time the invention was made to make them radiolucent. The motivation

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would have been to permit radiological operations to be performed on a patient while positioned in the arm protection apparatus.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogburn (U.S. Patent No. 2,245,293) in view of Witter (U.S. Patent No. 3,884,225) as applied to claim 11 above, and further in view of Tari (U.S. Patent No. 4,662,366).

Ogburn '293 as modified by Witter '225 fails to teach:

four arm sections attached to the central cushion pad.

Tari '366, as seen in Figures 1 through 4, shows an arm support (10) for a patient's arms comprising separate upper and lower assemblies (30 and 32) positionable about the upper and lower sections (18 and 22) of an arm of a patient (14), the upper and lower assemblies configured to immobilize the entire arm of a patient (col. 3, lines 62 through 67), wherein each of the upper and lower sections includes means for attaching (45 and 46).

With regard to claim 12, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by the combination of Ogburn '293 and Witter '225 such that it would include four arm sections as taught by Tari '366. The motivation would have been to provide support for the upper and lower sections of a patient's right and left arms.

Response to Arguments

7. Applicant's arguments filed 03 October 2005 have been fully considered but they are not persuasive.

In response to Applicant's comment that the Examiner apparently understood the language (i.e., "easily" and "quickly") in claims 2 through 6 and 10 through 12, the Examiner notes that while the rejection should have been made in prior Office actions, new grounds of rejection are not precluded during continued examination and, therefore, the rejection is maintained. Furthermore, Applicant's submission of a dictionary definition for the word "easily" also included relative language. Moreover, the Examiner contends that specific examples of tear-away foam materials are not taught in Applicant's disclosure on page 9 at line 9 through 12, or anywhere else in the Specification.

In response to Applicant's request for the column(s) and line number(s) in the Ogburn patent of a suggestion or teaching for a material that can be easily cut, the Examiner directs Applicant to col. 2, lines 3 through 6 where Ogburn '293 teaches spongy material enclosed in thin leather, both of which may be easily cut.

In response to Applicant's request of the Examiner to detail the means for readily attaching and detaching taught by Ogburn '293, the Examiner directs Applicant to review elements 33, 34 and 35 as duly noted on page 3, section 5 of the last Office action.

In response to Applicant's statement that the Examiner fails to address the requirement of Claim 1 of a soft cushion pad right arm upper section, a soft cushion pad left arm upper section, a soft cushion pad right arm lower section, and a soft cushion pad left arm lower section, the

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Examiner directs Applicant to page 5, section 5 of the last Office action, specifically , the discussion of Tari '366.

In response to Applicant's statement that the device shown by the combination of Ogburn '293, Witter '225 and Tari '366 does not provide protection to the arms of a patient, the Examiner notes that the device shown by the combination of the prior art is capable of functioning as a protection apparatus.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicant's traversal of the rejection of claim 4, the Examiner contends that thin leather and foam are both generally radiolucent materials. However, because the combination of references lacked an explicit teaching for radiolucency, the Examiner included a motivation for modification.

In response to Applicant's statements regarding the claimed H-shape, the Examiner contends that the H-shape is inherent to the device shown by the combination of Ogburn '293, Witter '225 and Tari '366.

Applicant's arguments referencing the leather cuff (18) of the Ogburn patent are moot since the Examiner has not relied upon them in the final rejection of the claims.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tlm

01 December 2005


Thomas B. Will
Supervisory Patent Examiner
Group 0000